IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6874 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JYOTI LIMITED

Versus

ABHESING H RANA

Appearance:

M/S TRIVEDI & GUPTA for the Petitioner.

MR RD RAVAL for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/09/2001

ORAL JUDGEMENT

With the consent of the parties, the matter is taken up for hearing today.

The petitioner-Union has challenged the Award passed by the Labour Court, Vadodara in Reference (LCV) No.616 of 1989. The respondent had raised an Industrial Dispute challenging his removal order and has prayed for

reinstatement with all consequential benefits, including back wages for the intervening period.

The concerned workman was subjected to charge-sheet dated 5.7.1984 and ultimately, he was removed from the post of Welder Grade VI. Since there is a consensus between the parties to the effect that the petitioner-Company is not challenging the reinstatement order, it is not necessary to point out the detailed facts regarding the incident in question. It is required to be noted that during the pendency of the Reference, in view of the Pursis given by the Company at Exhibit 25, the concerned workman was taken back in service on his original post. The reference therafter continued for the purpose of deciding the other claims of the workman. The Labour Court came to the conclusion that if the Company has given promotion to other employees, placing them in the higher grade, the same benefits may be given to the concerned workman and his salary should be paid accordingly considering his case for promotion on the higher grade. Accordingly, the Reference was allowed. The Labour Court passed an order of reinstatement, with 50% back wages for the intervening period and also awarded Rs.2,000/- towards costs of the Reference. The Court has also passed an order to pay interest at the rate of 18% per annum from 1.7.1999 in case the Company fails to carry out the Award.

This Court, while admitting this petition, has granted stay qua back wages only. Since the matter is admitted by this Court, today it is taken up for final hearing.

At the time of hearing of this petition, Mr.Thaker for the petitioner-Company, has fairly stated that the Company is not challenging the order of reinstatement, but back wages may be reduced from 50% to 30% for the intervening period, i.e. from the date of termination till he was reinstated in service. He further submitted that the order of the Labour Court giving benefit of promotion to the concerned employee was not called for and no such prayer could have been granted and even there was no demand regarding promotion before the Labour Court.

Mr.Raval, learned Advocate for the respondent-workman, on instructions from his client, submitted that the workman has no objection if the back wages is reduced from 50% to 35% (*). This concession is made by the concerned workman as he has already retired by way of superannuation. He also fairly submitted that

even if the order of interest is also modified, he has no objection, but, according to him, the Company must comply with the Award forthwith so that the respondent-workman, who has retired since long, may not have to suffer further agony in this behalf.

In view of the aforesaid consensus between the parties, the order of the Labour Court is modified to the following extent :-

The order of reinstatement passed by the Labour Court is upheld and the concerned employee will be entitled to 35% (**) back wages from the date of termination till he was actually reinstated in service. It is also clarified that the concerned workman will be entitled to all other consequential benefits in view of his continuous service on his original post and whatever benefits, which he would have been otherwise entitled on the basis of his continuous service till his superannuation may be made available to him.

So far as the reference about promotion in the impugned order is concerned, the said direction in the Award is set aside. The employee will be entitled to all other consequential benefits, as stated above, upto the date of his superannuation. The order of payment of 18% interest from 1.7.1999 is also set aside. The petitioner-Company will pay necessary amount which is required to be paid to the concerned workman in view of the present order within a period of one month from today. If the aforesaid amount which the respondent is entitled as per this order is not paid, the workman will be entitled to have the said amount with interest at the rate of 18% per anum from 10th October, 2001.

The order of the Labour Court is accordingly modified to the aforeaid extent. Rule is partly made absolute with no order as to costs.

(P.B. Majmudar, J.)

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Note :-(*) (**) At the two places, where asterisk mark appears, instead of the original `30%', mentioned in the order dated 4.9.2001, it has been corrected as `35%', as per the order dated 4.10.2001 passed in the Note for Speaking to Minutes filed in the

present Special Civil Application.

(apj)